

REMARKS/ARGUMENTS

It is noted that claims 1-17 have been rejected under § 112 of the Patent Statute as being indefinite. In applying this rejection the Examiner has asserted that the terms "an overhead signage sight height from said surface to a top" at claim 1, II 10-11 are indefinite. The Examiner indicated that it is unclear what applicant is trying to claim.

The terms in question are quite clear and specifically defined in the detailed description. The Examiner is invited to observe page 19, I 9 et seq. stating: "That distance to the tops 296 and 297 is arbitrarily defined herein as an overhead signage sight height, however, the sight lines from the eyes of a shopper will be to the signage suspended from the vicinity of the tops 296 and 297". The terms further are defined both in dimension and are illustrated in connection with the drawings as seen at p. 11, II 13 and 29.

It is well settled that a patentee is his own lexicographer. The Federal Circuit has reiterated that "a patentee is free to be his own lexicographer:"

Markman v. Westview Instruments, Inc. 52 F.3d 967, 979, 34 USPQ2d 1321, 1330 (Fed. Cir. 1995) (in banc), aff'd, 517 U.S. 370, 38 USPQ2d 1461 (1996).

It is noted that claims 1-17 have been rejected under § 103 of the Patent Statute. In applying this rejection the Examiner has indicated that the claims are unpatentable over Pool, U. S. Patent No. 2,638,636 (Pool), in view of Feleppa, U. S. Patent No. 5,700,102 (Feleppa) and Thornton, U. S. Patent No. 3,673,720 (Thornton) and Reilley, et al., U. S. Patent No. 5,120,941 (Reilley, et al.).

In applying this rejection, the Examiner has stated that Pool shows merchandise having given trade dress at an outdoor paved surface being presented, a retailing geometric boundary (34) at the paved surface, merchandise information signage displaced to advertise the merchandise (col 3, II 65-72), a cashwrap region (12-20) adjacent the shopper aisle, the signage being at the shopper's line of sight (col 3, II 62-63), merchandise being located in correspondence with the merchandise information signage (col 3, II 67-70), bay/niche containing merchandise.

Pool describes a drive through grocery with a roadway extending within a fenced boundary. From the opening in the fence the driver encounters a wall (34) which the Examiner improperly construes as a geometric boundary as taught by the instant invention. That geometric boundary is defined such that merchants can allocate such a boundary within a paved parking lot to carry out seasonal marketing of goods which are suited for outdoor marketing purposes such as garden and lawn supplies. There is no merchandise information signage

described in Pool. There is no signage described in Pool. What the Examiner is pointing to in Pool are a series of niches which are in the wall which are deep, the faces of which are enclosed in glass to define a showcase. Grocery products are displayed in these niche showcases. While the terms sign or signage do not as much as appear in Pool the term showcase does. The term "showcase" is defined as a case with a glass top and sides, used to display articles and protect them from dust and injury, as in a store or exhibition. (Webster's New Twentieth Century Dictionary, Second Edition).

Pool used the term "showcase" accurately to describe the wall niches. With the Pool approach to merchandising groceries, customers remain in their cars and proceed to order-cashier booths somewhat resembling highway toll booths which, of course, they are. Those booths are not cash-wrap stations there is no "wrap" function. See the attached declarations of Kern and Baughman. The customer then picks up the merchandise at an enclosed building 22. Note that there is a parking lot referred to as a "parking yard 56". Nothing occurs in that parking lot which is the facility utilized by the instant invention. The shopper line of sight region described in claim 1 is carefully defined with respect to the top of the poles and the overhead signage sight height, the signage extending downwardly from the signage support which is located at the top of those poles. The line of sight described in Pool is one from an automobile which in 1951 would have been about 4 1/2 feet and presumably substantially horizontal. See declaration of Kern. Of more importance, there are no signs described in Pool. The Examiner indicates the merchandise is located in correspondence with the merchandise information signage. That is incorrect. There is no signage described in Pool and the merchandise, while having an exemplary display in showcases, is picked up from building 22. In claim 1 anchors and poles combine to define bay distances and bays and the claim also positions merchandise within the bay below the bay access elevation, i.e., the bottom of the signs, and locates the merchandise in correspondence with the merchandise information signage. There are no signs in Pool and the merchandise is not described as being positioned below such carefully claimed sign and pole structuring of claim 1.

Pool clearly teaches against the concept of the present invention which is to get away from the undesirable atmosphere of a retail parking lot. Pool keeps the automobile motors running with the exception of having a parking lot with nothing added to it for merchandising purposes. The Examiner is invited to return to page 3 of the instant application describing that the parking lot itself traditionally has been considered a detriment to the fostering of sales. Such parking lots typically involve exhaust fumes, automobiles being poorly driven, debris strewed about and they typically exude the environment of a vast stretch of asphalt. That's Pool. See declarations of Kern, Baughman, Dascenzo and Wood.

The Examiner then details what Pool does not show, indicating that overhead signage extends from the surface to the top of the poles. That's incorrect. See Figs. 1 and 10 of the drawings.

Next, the Examiner states that Feleppa (Fig. 88) shows a marketplace having plurality of poles forming a retail area, the poles extending from the ground to a top. Feleppa shows a rigid tent structure and, in fact, doesn't show ground. Feleppa describes Fig. 88 as follows: "FIGS. 66-93 show, as perspective stick figures, various frame configurations formed by rigid elongate elements joined together by connectors formed by assemblies of the modules of the invention." Fig. 88 is a tent, (at least the patent describes them as shelters) with a top carrying a sign in the middle. The Examiner is utilizing total speculation in calling Fig. 88 a marketplace. The sign of can be used for identifying other produce selling locations, for example, the tent could be used as a storehouse. The Examiner is not entitled to guess the meaning of the tent in applying a rejection. The Examiner is correct in indicating that Feleppa shows poles. The Examiner has not identified and could not identify how one would be constrained to put those poles around the fence or wall of Pool and end up with Fig. 1 of the instant application. Where is the nexus that shows that the tent would be erected in the parking lot of Pool? There is none. As the applicants describe in the background of the instant application the use of tents to sell outdoor products in parking lots heretofore has been deemed not to be cost effective and little if no signage is utilized. Of course, if produce were sold in Fig. 88 of Feleppa the customer couldn't see the sign because of the shelter roof. See declarations of Kern and Baughman.

Next, the Examiner states that Reilley, et al., (Figs. 1-2) shows a retail area having bays with merchandise and signage (50) hanging from the signage support supporting merchandise information (54) positioning the merchandise within the bay/niche below the bay access elevation. The Examiner is correct in that Reilley, et al., shows a retail area. That retail area is a conventional shelf supporting heavy bag merchandise. Reilley describes "price channels" not signage support as described by the Examiner. On those channels are pads carrying product identification marketing information and in accordance with the Reilley, et al., invention UPC symbols. Instead of having to carry the heavy bags the customer simply tears off a slip and takes it presumably to the cashier. The Examiner is incorrect in describing signage hanging from the signage support. The Examiner is incorrect in describing that the merchandise is positioned within the bay/niche below the bay access elevation. Bay access elevation is accurately defined in the instant application and in claim 1 in conjunction with the step describing how the signage extends downwardly (see also p. 21, 16).

Next, the Examiner has stated that Thornton (Fig. 1) shows a plurality of poles extending into sleeves (57) in the ground to support the poles, the poles being connected at the tops (34)

with signage. Thornton shows two poles, not a plurality of poles which stick in the ground and support a sign which slides up and down on the poles so that the lettering on the sign can be changed. Claim 1 calls for interconnecting the pole tops together with a horizontally disposed signage support to define a 3-dimensional retailing region with a select number of merchandising bays extending between adjacent said poles. Thornton just shows a sign. Applicants query how Thornton can be construed to turn Pool into the facility shown in Fig. 1 of the instant application. There is no relationship and one would not be drawn to combine Pool with any of the references to achieve the facility, for example, shown in Fig. 1. See declarations of Dascenzo and Wood.

Next, the Examiner has provided an 18 line sentence indicating that it would have been obvious to modify Pool. Pool isn't "modified", Pool must be shown to be logically combined with the secondary references. What the Examiner has done has been to import the language from the claims of the instant application into the references while avoiding the different terminology with different meaning employed in the references.

"[I]t is impermissible to use the claimed invention as an instruction manual or 'template' to piece together the teachings of the prior art so that the claimed invention is rendered obvious... This court has previously stated that '[o]ne cannot use hindsight reconstruction to pick and choose among isolated disclosures in the prior art to deprecate the claimed invention.'"
In re Fritch 972 F2d 1260, 1266, 23 USPQ2d 1780, 1784 (Fed. Cir. 1992).

It is impermissible to use the inventor's disclosure as a "roadmap" for selecting and combining prior art disclosures. See *Interconnect Planning Corp. v. Feil* 774 F2d 1132, 227 USPQ 543 (Fed. Cir. 1985).

Using terms imported from the specification and claims of the instant application and using the applicants own disclosure as a roadmap, the Examiner then states that it would have been obvious to "modify" Pool to show "...a plurality of anchors about the boundary extending below the surface and mutually spaced apart to establish bay distances, each said anchor having a vertically disposed sleeve having a support distance located below the paved surface, ...". The only bay distance shown in the art cited is a shelf width. The only anchors are two anchors supporting a slidable sign. There is no bay distance associated with that sign. The Examiners' analysis is improper and incorrect.

Next, the Examiner states that it would have been obvious to "modify" Pool to show "...a plurality of first poles having ends inserted into the sleeve,...". The only pole shown in the cited art are poles presumably holding up a tent and two poles holding up a slidable sign. The Examiner ignores the provisions of the third substantive paragraph of claim 1 wherein the first poles have an insertion end configured for slidable insertion to the extent of said support

distance within a said sleeve and extensible, when inserted within said sleeve, and overhead signage sight height from said surface to a top. One queries where one would put the pole and the anchors in Pool? There is no relationship between the references which would make their combination logical.

Next, the Examiner states that it would have been obvious to "modify" Pool to show "...overhead signage extending from the surface to the top of the poles,...". That isn't what is claimed. In claim 1 the signage extends downwardly from the signage support within a shopper line of sight region. The signage support extends between the pole tops as claimed. The Examiner is invited to revisit Fig. 10.

Next, the Examiner states that it would have been obvious to "modify" Pool to show "...the poles within the sleeves defining a retail floor,...". The fourth substantive paragraph of claim 1 describes positioning the first poles within said anchor sleeves to define a retail floor pattern having an entrance region and a shopper aisle extending therefrom to a shopper exit region. None of the references describe poles within anchors defining a retail floor pattern with the noted entrance, aisle and exit. In fact, the entrance of Pool is a distance between wall 34 and a curb and its exit is the distance between a fence and curb 66. There are no poles and there is no reason to have them in Pool.

Next, the Examiner states that it would have been obvious to "modify" Pool to show "...interconnecting the pole tops with horizontally disposed signage support to define a three dimensional retailing region with a select number of merchandising bays extending adjacent the poles from at least a portion of the geometric boundary to the shopper aisle,...". None of the references show an interconnection of pole tops with a horizontally disposed signage support to define a 3-dimensional retailing region with a select number of merchandising bays extending between adjacent said poles from at least a portion of said geometric boundary to said shopper aisle. The only pole interconnection shown in any of the references is a connection of two poles to support a slideable sign. That is Thornton. Thornton does not show nor possibly suggest the interconnection defining a 3-dimensional retailing region with a select number of merchandising bays extending between adjacent said poles from at least a portion of the geometric boundary to the shopper aisle. Claim 1 requires that the poles are positioned within the anchor sleeves to define the retail pattern with the aisle. The Examiner is simply following the noted roadmap provided by the applicants' own disclosure. See declaration of Dascenzo.

Next, the Examiner states that it would have been obvious to "modify" Pool to show "...said signage support supporting merchandise information at said boundary along the bays,...". Here again, the Examiner is stating subject matter not in the claims. The step for interconnecting the pole tops with a horizontally disposed signage support does not discuss

supporting merchandise information at said boundary. The statement has no meaning in law or fact.

Next, the Examiner states that it would have been obvious to "modify" Pool to show "...positioning the merchandise within the bay/niche below the bay access elevation because having a plurality of poles extending into anchors/sleeves in the ground to define a retail area would provide for easy and quick assembly of the retail boundary,...". Initially it should be pointed out that none of the references, singly or in combination show a bay access elevation. Also it appears that the Examiner is applying this rejection based on some apparent personal expertise and not on any documentation. Accordingly, applicants request the Examiner to provide evidentiary documentation fully supporting his statement or provide a personal affidavit fully supporting his statement under the provisions of 37 CFR § 1.104(d) (2).

Next, the Examiner states that it would have been obvious to "modify" Pool to show "...having overhead signage supported and extending from the boundary of the bay and interconnecting the top of the poles would allow for the easy advertisement of the available products as taught by Thornton,...". Thornton only teaches a slidable sign and two poles. There is no discussion in the claims of "extending from the boundary of the bay". Apparently, the Examiner is relying on his own expertise in asserting this rejection. Accordingly, the applicants request that the Examiner supply evidentiary documentation in full support of his statement or a personal affidavit fully supporting his statement under the provisions of 37 CFR § 1.104(d) (2).

Next, the Examiner states that it would have been obvious to "modify" Pool to show "...having a plurality of merchandising bays extending adjacent the poles would enable the separate advertisement of the available merchandise as taught by Thornton,...". There are no merchandising bays shown in Thornton - just a sign slidably supported on two poles. Apparently, the Examiner is relying on his own expertise in asserting this rejection. Accordingly, the applicants request that the Examiner supply evidentiary documentation fully supporting his statement or supply an affidavit fully supporting his statement under the provisions of 37 CFR § 1.104(d) (2). (3)

Next, the Examiner states that it would have been obvious to "modify" Pool to show "...and positioning the merchandise within the bay/niche below the bay access elevation would enable easy showing and storing of the display merchandise." The references whether taken singly or in combination fail to show or suggest this step of positioning the merchandise within the bay below the bay access elevation and locating the merchandise in correspondence with the merchandise information signage. Apparently, the Examiner is relying on some personal expertise in asserting this rejection. Accordingly, the applicants request that the Examiner

supply evidentiary documents fully supporting his statement or a personal affidavit drawn under the provisions of 37 CFR § 1.104(d) (2).

It is noted that the Examiner has ignored the last step of claim 1. The Examiner has misquoted portions of the claim, failed to consider the claim as a whole by dissecting its individual parts and has used the applicants' own description as an instruction manual or template to piece together the teachings of prior the art. Those teachings of the prior art as shown at Pool, in fact, teach against the purpose of the instant invention. The rejection is improper and should be withdrawn.

In rejecting claims 2-3, the Examiner states that Pool as "modified" shows all the claim limitations except for the flags being supported on the poles, the flag assemblies being provided as pennants formed with nylon. With this rejection the Examiner combines Feleppa as showing flags being supported on the poles.

As stated at page 14 of the application the flag assemblies 93-98 are perception stimulators, in effect, leading the shoppers' sight lines to the information provided at the overhead signage as at 40-42, 52-54 and 62-64. There are no poles nor are there any flags, nor are there any merchandise signs in Pool. Feleppa shows a tent, a sign over its top which cannot be seen from inside the tent and two pennants which are not positioned upon the signage supporting poles.

In applying the rejection, the Examiner stated that it would have been obvious to "modify" Pool's modified structure to show "...the flags being supported on the poles because having flags on the poles would attract people's attention to the installation and thus enhance sales of product as taught by Feleppa..." Again, the Examiner is relying on either common knowledge or his own personal knowledge in asserting this rejection. Applicants call upon the Examiner to produce evidentiary documentation showing that flags on poles attract peoples attention and enhance sales. In the absence of such documentation the applicants call upon the Examiner to supply a personal affidavit supporting his position (37 CFR § 1.104(d) (2)). Claims 2 and 3 require that the flag support structures and flags be at the top of the poles. The tops of the poles are carefully defined in claim 1 and, as noted above, are present to attract the customers' eye to the signage and away from the undesirable atmosphere of a parking lot. Pool, at best, suggests an even worse atmosphere. As part of this rejection the Examiner further states: "...and having the flags as pennants formed with nylon would have been obvious as pennants is a well-known flag shape and nylon is a well known flag matter as nylon is known for element resisting." As shown in an accompanying declaration, nylon, indeed, is unique for the purpose at hand and its selection follows research in this field. See declaration of Dascenzo. Again, the Examiner is using his own personal knowledge or some form of common knowledge to assert a

rejection. Therefore the applicants call upon the Examiner to show evidentiary documentation that using nylon for pennants is well known. The Examiner is further called upon to supply a personal affidavit describing just how nylon is well known with respect to the teachings of claims 2 and 3. (37 CFR § 1.104(d) (2)). With respect to claim 4, the Examiner has stated that it would have been obvious "...to modify Pool's modified structure to show the shelter being canopy because canopy is well known in the art for covering an outdoor cashier area." Claim 4 describes mounting the canopy with said poles at said cash-wrap region. There is no cash-wrap region in Pool nor is such a region present in any of the secondary references. Again, the Examiner is relying on his personal knowledge or common knowledge in asserting this rejection. Applicants call upon the Examiner to supply documentary evidence supporting his position or to supply the applicants with an affidavit describing how he has personal knowledge that this is obvious under 37 CFR § 1.104(d) (2). (4)

In rejecting claims 5-6, the Examiner has stated that it would have been obvious "...to modify Pools' modified structure to show the step of suspending the merchandise information signage establishing the bay access elevation as about eight feet, the sight height having a range of between 10 feet to 12 feet because having the bay access elevation about eight feet provide for an easy unrestricted access area below the bay for merchandise, and having the sight height having a range between 10 feet to 12 feet would enable a person to view the signage without having to look too far up and thus increases a person's willingness to read the signage for information." Again, the Examiner is relying upon his personal knowledge to assert a claim rejection. The Examiner is called upon to supply documentary evidence supporting his assertion or supply to the applicants a personal affidavit so establishing this obviousness under 37 CFR § 1.104(d) (2). Of course, Pool shows no poles; shows no overhead signage sight height; and obviously shows no dimension of what is not shown. See declaration of Kern

In rejecting claim 7, the Examiner has stated that it would have been obvious "...to modify Pool's modified structure to show the spacing of the anchors about 3 feet to 20 feet because it would allow for sufficient space to position outdoor merchandise." Again, the Examiner is rejecting a claim based upon apparent personal knowledge. Applicants call upon the Examiner to provide documentary evidence supporting his position or to supply the applicants with a personal affidavit supporting this statement in accordance with 37 CFR § 1.104(d) (2).

In rejecting claim 8, the Examiner has stated that it would have been obvious "...to modify Pools' modified structure to show a plurality of covers each being extensible over a said anchor sleeve adjacent the surface, the cover covering the sleeve when the sleeve is not engaged with the pole because it would allow for the covering of the anchoring sleeve once the poles are removed, and covering the sleeves would prevent any tripping over the hole in the sleeve and

protect the sleeve against water and rain." Pool shows no anchors; no poles and is a permanent installation as opposed to a seasonal arrangement as taught by the instant methodology. Again, the Examiner is rejecting a claim based upon apparent personal knowledge. Accordingly, the applicants call upon the Examiner to supply documentary evidence supporting his personal position or supply a personal affidavit so supporting this position under 37 CFR § 1.104(d) (2).

In rejecting claim 9, the Examiner has stated that it would have been obvious "...to modify Pools' modified structure to show the shopper aisle, the entrance region, and the exit region having widths of about 10 feet because it would ensure the easy passage of cars in the store." Again, the Examiner is relying on apparent personal knowledge to assert a rejection. Accordingly, the applicants call upon the Examiner to supply documentary evidence supporting this position or a personal affidavit supporting such position under the provisions of 37 CFR § 1.104(d) (2). As noted in the attached declaration a value of 10 feet was a result of careful study and testing. See declaration of Kern.

In rejecting claim 10, the Examiner has stated that it would have been obvious "...to modify Pools' modified structure to show a tension cable assembly as said horizontally disposed signage support because a tension cable assembly would provide for easy supporting and tensioning of the support for supporting the signage." Again, the Examiner appears to be relying on personal information in asserting a claim, a practice criticized in the MPEP (§ 2144.03). Accordingly, applicants call upon the Examiner to provide documentary evidence supporting his position or a personal affidavit establishing his position under the provisions of 37 CFR § 1.104(d) (2).

In rejecting claim 11, the Examiner has stated that it would have been obvious "...to modify Pool's modified structure to show a horizontally disposed lower signage support interconnecting a said next adjacent pole at about the bay access elevation, coupling the horizontally disposed lower signage support with the signage adjacent the lower border because a lower signage interconnecting the poles at about the bay access elevation and adjacent the lower border would enable a customer to distinguish and identify merchandise beneath the bay access elevation." This is the feature shown at 346 in Fig. 10. None of the references suggest this feature taken singly or in combination. There is no lower signage support extending between adjacent poles at a bay access elevation in any of the references. Again, the Examiner appears to be relying on personal knowledge and expertise asserting this rejection. Accordingly, the applicants call upon the Examiner to supply documentary evidence supporting his position or a personal affidavit supporting his position under the provisions of 37 CFR § 1.104(d) (2).

In rejecting claim 12, the Examiner has stated that it would have been obvious "...to modify Pool's modified structure to show break away couplers coupling the signage support because break away couplers coupling the signage support would allow the support to break away preventing damage to the signage once the maximum amount of allowable force is exceeded." Again, the Examiner is rejecting a claim based upon his apparent personal knowledge. Accordingly, the applicants call upon the Examiner to supply documentary evidence supporting his position or a personal affidavit in support of that position under 37 CFR § 1.104(d) (2).

In rejecting claim 13, the Examiner has stated that it would have been obvious "... to modify Pool's modified structure to show a tensioned cable assembly supporting the signage because a tensioned cable assembly would provide for easy supporting and tensioning of the support for supporting the signage." None of the references disclose or suggest a tensioned cable assembly for any purpose. It is apparent that the Examiner has again rejected a claim based upon his apparent personal knowledge. Accordingly, the applicants call upon the Examiner to supply documentary evidence supporting this position or a personal affidavit in full support of this position under 37 CFR § 1.104(d) (2).

In rejecting claims 14-15, the Examiner has stated that it would have been obvious "...to modify Pool's modified structure to show two said anchors adjacent the boundary mutually spaced apart a banner width distance, two second poles each having an insertion end configured for slidable insertion to the extent of the support distance within a said sleeve of one of the two anchors, the second poles being extensible when inserted within a said sleeve, the second pole height from the surface to a second pole top greater than the overhead signage sight height, an upper banner support assembly extensible between the two second poles, removably horizontally coupling the upper banner support assembly between the two second poles adjacent the second pole tops, suspending a remotely viewable banner from the upper banner support, two said anchors adjacent the boundary locates the two anchors adjacent the entrance region because having two poles taller than the signage support at the entrance supported in sleeve with upper banner coupled to the two poles would allow a potential customer to view the installation at a distance and be attracted and enters the installation, and thus resulting in better sales." The only entrance shown in the references is the space between a wall and a curb. The references show no anchors as claimed; no poles having different heights; no upper banner support assembly extending between the poles of second height; no removable horizontal coupling of the upper banner support assembly; and no banner, let alone suspending a banner from that upper banner support. The subject at hand is shown at the entrance revealed in Fig. 1. See declaration of Kern. Again, the Examiner is rejecting claims

based upon his apparent personal knowledge and expertise. Accordingly, the applicants call upon the Examiner to supply documentary evidence supporting his position or a personal affidavit fully supporting that position under 37 CFR § 1.104(d) (2).

In rejecting claim 16, the Examiner has stated that it would have been obvious "...to modify Pool's modified structure to show the step of providing a plurality of anchors having a base plate at an elevation with respect to the paved surface to effect a linear alignment of the first pole tops because it would enable the tops of the poles to have the same height which would result in aesthetic appearance for the retail store." There are no such base plates suggested or shown in any of the references taken singly or in combination. Again, the Examiner is rejecting claims based upon his apparent personal knowledge or expertise. Accordingly, the applicants call upon the Examiner to supply documentary evidence supporting his position or a personal affidavit fully supporting that position under the provisions of 37 CFR § 1.104(d) (2).

The Examiner has supplied at this position in the Action no commentary in rejecting claim 17. That claim looks to the establishment of a grid of anchors as described in connection with Fig. 9. There is no such grid shown or suggested in the references whether taken singly or in combination.

It is noted that claims 18-26 have been rejected under §103 of the Patent Statute as being unpatentable over Pool (*supra*) in view of Feleppa (*supra*) and Thornton (*supra*) and Reilley, et al., (*supra*).

The Examiner again ignores the recitations of claim 18 in applying this rejection. Notwithstanding this aspect of the rejection the Examiner interprets the references out of context. As noted above, Pool describes a drive through grocery having a so called retail boundary which includes a fence and a sequence of showcases. The showcases are observed from car window level which the Examiner identifies as the shopper's line of sight. The Examiner states that there is signage described in Pool. There is not. The claim calls for an overhead signage sight height which is defined and is quite different than the billboard sight from an automobile window. The objective of the patent is to display food and then drive forward to a toll booth and order it. The only aspects of claim 18 which the Examiner has identified correspond with the opening paragraph and a recitation of a plurality of merchandise information carrying signs. There is no description whatsoever in Pool of a merchandise carrying sign.

Of the nine paragraphs in claim 18 the Examiner has incorrectly equated Pool with a mere two of those paragraphs. Having described how Pool applies in the rejection in six lines, the Examiner then describes how Pool does not apply in seventeen lines.

The Examiner then describes Feleppa as showing a marketplace having a plurality of poles forming a retail area, the poles extending from the ground to a top. Feleppa doesn't describe that. Feleppa describes a frame configuration utilized as a shelter. While Fig. 88 shows a fresh produce sign on top of a stick figure there is no description that the sign indicates that what is below it is a retail region. The term retail does not appear in the patent. Whatever shelter was intended is not disclosed and the shelter shown could be, for example, a storage tent with a general area sign sticking above it. The Examiner cannot read into a reference what is not there. Additionally, Feleppa is not properly combined with Pool. Why would Pool want to erect a tent upon his driveway? How can one construe the frame structure of a tent as suggesting the erection of a plurality of poles defining a merchandising border and carrying signage between them?

The Examiner then identifies Reilley, et al., as showing a retail area having bays with merchandise and signage. Reilley, et al., shows a conventional shelf with shelf mounted tear off strips which carry a UPC symbol. As noted above, claim 18 requires that the signage support assembly be removably coupled with overhead top connector assemblies. That feature cannot be construed from Reilley, et al., and the instant invention cannot be manipulated into a combination of Reilley, et al., with Pool. Pool might use the product code carrying tear off sheets from Reilley, et al., to carry to its cash booth. However, more than likely this would require the customer to get out of his or her car to access the sheets. Notwithstanding such a questionable improvement to Pool, the combination bears no applicability whatsoever to the instant invention.

Thornton is cited to show plurality of poles extending into sleeves in the ground to support the poles, the poles being connected at the top with signage. Thornton shows a large sign which slides on two poles which are mounted in the ground. The poles aren't spaced a bay distance and no sleeve engagement surface. It should further be noted that two poles are not a "plurality" of poles.

Next, the Examiner proceeds to describe that it is obvious to "modify" Pool. This is an improper rejection as noted above.

The Examiner states that it would have been obvious to "...modify Pool to show a plurality of anchors fixed beneath the surface in a geometric pattern within the retail region boundary, at least two of the anchors being mutually spaced apart a bay distance, each of the anchor having a vertically disposed sleeve having a support distance located below the surface and extending to an engagement surface,...". None of the references show a plurality of anchors in a geometric pattern within a retail region boundary. None of the references show at least two anchors being mutually spaced apart a bay distance. None of the references show a sleeve extending to an engagement surface. Should the Examiner be relying on some personal

expertise, then the applicants request that the Examiner supply evidentiary documentation supporting his position or supply the applicants a personal affidavit fully supporting his position drawn under the provisions of 37 CFR § 1.104(d) (2).

Next the Examiner states that it would have been obvious to "modify" Pool to show "...a plurality of first poles of first height, each pole having a top and an insertion end slidably inserted in the sleeve, the poles defining a merchandising region exhibiting an entrance region, a shopper aisle, and an exit region, said pole establishing an overhead signage sight height from the surface to the top,...". The Examiner misreads the claim paragraph. Missing from the Examiner's statement is the component of the claim reciting "wherein said insertion end is in freely abuttable contact with said sleeve engagement surface, said first poles being inserted within said anchors in mutually spaced adjacency". Additionally, it is the pole first height which establishes the overhead signage sight height. None of the references show or suggest a plurality of poles extending within select anchor sleeves and in freely abuttable contact with a sleeve engagement surface. In fact there is no sleeve engagement surface shown anywhere in the references. None of the references suggest an overhead signage sight height. Again, the Examiner appears to be rejecting based upon some personal expertise. Accordingly, the applicants request the Examiner to supply evidentiary documentation supporting his statement or provide a personal affidavit supporting such statement pursuant to 37 CFR § 1.104(d) (2). See declaration of Dascenzo and Young.

Next, the Examiner states that it would have been obvious to "modify" Pool to show "...an overhead top connector assembly fixed to each of the first pole adjacent the top,...". These connectors are described, for example, at 342 and 344 in Fig. 10. There are no such connector assemblies described or suggested in any of the references. Apparently, the Examiner again is relying on some personal expertise. Accordingly, applicants request that the Examiner supply evidentiary documentation fully supporting his statement or provide a personal affidavit fully supporting such statement under 37 CFR § 1.104(d) (2).

Next, the Examiner states that it would have been obvious to "modify" Pool to show "...a plurality of signage support assemblies removably coupled to the overhead top connector assemblies to define a boundary of the merchandising region including the entrance region,...". None of the references show a signage support assembly removably coupled to the overhead top connector assembly. None of the references show or suggest the definition of a boundary of a merchandising region with an entrance region achieved with the sign support assemblies and connectors. Again, the Examiner appears to be relying upon his own expertise in applying this rejection. Accordingly, applicants request the Examiner supply evidentiary documentation in

full support of his statement or supply a personal affidavit fully supporting his statement under 37 CFR § 1.104(d) (2).

Next the Examiner states that it would have been obvious to "modify" Pool to show "...a plurality of signs suspended from the upper signage support assemblies and extending downwardly therefrom to a lower border to define a shopper line of sight region,...". The Examiner omits that the signs are merchandise information carrying signs. None of the references, taken singly or in combination show or suggest such a plurality of information carrying signs which are suspended from select upper signage support assemblies and which extend downwardly to a lower border. Recall that the upper signage support assemblages are removably coupled with the overhead top connector assemblies. That combination is nowhere suggested in the references. Apparently, the Examiner again relies upon some personal expertise in formulating this statement. Accordingly, applicants request that the Examiner supply evidentiary documents fully supporting his statement or supply a personal affidavit carrying information sufficient to fully support his statement under the provisions of 37 CFR § 1.104(d) (2). 

Next, the Examiner states that it would have been obvious to "modify" Pool to show "...a retainer connection assembly fixed to each of the first pole at a location defining a bay access elevation above the surface when the poles are inserted within the sleeves,...". These retainer connection assemblies are described in connection with Fig. 10, for example, at 358 and 366. None of the references, taken singly or in combination teach or suggest such a retainer connection assembly; or such an assembly being fixed to first poles at a location defining a bay access elevation. None of the references teach the presence of a bay access elevation and that the bay access elevation is developed when the poles are inserted in the sleeves. Apparently, the Examiner again relies on some personal expertise in making the statement. Accordingly, applicants request that the Examiner supply documentary evidence fully supporting his statement or supply a personal affidavit fully supporting this statement under the provisions of 37 CFR § 1.104(d) (2).

Next, the Examiner states it would have been obvious to "modify" Pool to show "...a plurality of lower signage retainer assemblies removably coupled between retainer connector assemblies of adjacent said first poles in parallel relationship with the upper signage support assemblies,...". Such lower retainer assemblies are shown, for example, at 346 in Fig. 10. None of the references, taken singly or in combination show a plurality of lower signage retainer assemblies which are removably coupled between retainer connector assemblies as claimed. None of the references show the parallel relationship of such an assembly with an upper signage support assembly which also is not suggested in the references. Apparently, the

Examiner again is relying on some personal expertise to make this statement. Accordingly, applicants request that the Examiner supply documentary evidence fully supporting his statement or a personal affidavit fully supporting such statement under the provisions of 37 CFR § 1.104(d) (2).

Next, the Examiner states that it would have been obvious to "modify" Pool to show "...a plurality of lower couplers removably connected between the lower signage retainer assemblies and the lower border of the signs because having a plurality of poles extending into anchors/sleeves in the ground to define a retail area would provide for easy and quick assembly of the retail boundary,...". This statement is without logic. These lower couplers are shown, for example, at 368 and 370 in Fig 10. Such couplers or their use as claimed are not disclosed or suggested by any of the references taken singly or combined. Again, the Examiner appears to rely upon some personal expertise in making this statement. Accordingly, applicants request that the Examiner supply evidentiary documentation fully supporting his statement or supply a personal affidavit fully supporting this statement under 37 CFR § 1.104(d) (2).

Next, the Examiner states that it would have been obvious to "modify" Pool to show "...having removable overhead signage attached to connectors at the top of the poles would allow for fastening of the signage to poles and advertising of merchandise,...". This statement makes no sense and doesn't appear to be a rejection. The sign recitation in claim 16 doesn't use the term "removable" and they aren't directly connected to the overhead top connector assembly. To the extent the statement is understood, the references, taken singly or in combination bear no resemblance to it. Apparently, again, the Examiner is relying upon some personal expertise to support this statement. Accordingly, applicants request that the Examiner supply evidentiary documentation fully supporting this statement or a personal affidavit fully supporting the statement in accordance with 37 CFR § 1.104(d) (2).

Next, the Examiner states that it would have been obvious to "modify" Pool to show "...having a plurality of signs suspended from the upper signage support assemblies and extending downwardly therefrom to a lower border to define a shopper line of sight region would allow for the easy advertisement and showing of the available products as taught by Thornton,...". Thornton doesn't show a plurality of merchandise information carrying signs suspended from a plurality of upper signage support assemblies removably coupled with overhead top connector assemblies. None of the references, taken singly or in combination show or suggest the overhead top connector assembly recitation; the plurality of upper signage support assemblies recitation; or the plurality of merchandise information carrying signs recitation of claim 18. Apparently, the Examiner again is relying on some personal expertise to make this statement. Accordingly, applicants request that the Examiner supply evidentiary documentation

and full support of this statement or a personal affidavit fully supporting this statement drawn under the provisions of 37 CFR § 1.104(d) (2).

Next, the Examiner states that it would have been obvious to "modify" Pool to show "...having a retainer connection assembly fixed to each of the first pole at a location defining a bay access elevation above the surface when the poles are inserted within the sleeves would ensure the poles are securely fastened and not getting loose,...". The Examiner's statement is incorrect. However, none of the references taken singly or in combination show or suggest a retainer connection assembly fixed to the poles at a location defining a bay access elevation. None of the references show or suggest a bay access elevation above a paved surface when the poles are inserted within the sleeves. Apparently, the Examiner again is relying on some personal expertise in making this statement. Accordingly, applicants request that the Examiner supply evidentiary documentation fully supporting his statement or a personal affidavit fully supporting his statement drawn under the provisions of 37 CFR § 1.104(d) (2).

Next, the Examiner states that it would have been obvious to "modify" Pool to show "...having a plurality of lower signage retainer assemblies removably coupled between retainer connector assemblies of adjacent said first poles in parallel relationship with the upper signage support assemblies would allow for the easy advertisement and showing of the available products as taught by Thornton,...". Thornton shows a slideable sign on two poles and has nothing to do with the "showing of the available products", terminology not present in the claim. Again, the Examiner apparently is relying on some personal expertise in making this statement of rejection. Accordingly, applicants request that the Examiner supply evidentiary documentation fully supporting his statement or a personal affidavit in full support of this statement under the provisions of 37 CFR § 1.104(d) (2).

Next, the Examiner states that it would have been obvious to "modify" Pool to show "...having a plurality of lower couplers removably connected between the lower signage retainer assemblies and the lower border of the signs would enable the support of signage and easy removable of the signage when not required". Of course, none of the references, taken singly or in combination show a retainer connection assembly; the plurality of lower signage retainers assemblies removably coupled between retainer connector assemblies; or a plurality of lower couplers. Apparently, the Examiner again is relying on some personal expertise in making this statement. Accordingly, applicants request that the Examiner supply evidentiary documentation supporting his statement in full or a personal affidavit supporting the statement in full drawn under the provisions of 37 CFR § 1.104(d) (2).

Next, the Examiner rejects claim 19 stating that Pool as "modified" shows all the claimed limitations except for the support assembly having an elongate cable, cable tensioner coupled to the cable, two spaced apart spring actuated couplers manually connectable with the top connector assemblies. Pool and the secondary references do not show all the claimed limitations whatsoever. Pool may be construed in a contorted fashion to resemble the introductory paragraph of claim 18. In applying the rejection the Examiner states that it would have been obvious to "modify" Pool's modified structure to show "...the support assembly having an elongate cable, a cable tensioner coupled to the cable, two spaced apart spring actuated couplers manually connectable with the top connector assemblies because having a cable and cable tensioner with two spaced apart spring actuated couplers manually connected to the connector assemblies would ensure the proper and straight support of the signage due to the adjustability of the length of the cable." None of the references, taken singly or in combination show or suggest subject matter of claim 19. There are no cables in any of the references which are utilized in sign support. Again, the Examiner appears to make the statement based upon some personal expertise. Accordingly, applicants request that the Examiner supply evidentiary documentation fully supporting his statement or a personal affidavit fully supporting his statement drawn under the provisions of 37 CFR § 1.104(d) (2).

In rejecting claim 20, the Examiner states that Pool as "modified" shows all the claimed limitations except for the support assembly having an elongate cable, a cable tensioner coupled with the cable, two spaced apart spring actuated couplers manually connectable with the retainer connector assemblies. In reality as stated above, Pool as "modified" does not show all the claimed limitations. Then the Examiner states that "...because having a cable and cable tensioner with two spaced apart spring actuated couplers manually connected to the retainer connector assemblies would ensure the proper and straight support of the signage due to the adjustability of the length of the cable". Again, none of the references, taken singly or in combination show a lower signage retainer assembly or its implementation with an elongate cable and the remaining recited components. Apparently, the Examiner again is relying on some personal expertise in making this statement. Accordingly, applicants request that the Examiner submit evidentiary documentation in full support of the statement or a personal affidavit fully supporting his statement drawn under the provisions of 37 CFR § 1.104(d) (2).

In rejecting claim 21, the Examiner states that Pool as modified shows all the claimed limitations except for what in effect is the recitation of claim 21. In making the rejection the Examiner states that it would have been obvious to "modify" Pool's modified structure to show "... the lower couplers being configured to break away in response to the assertion of predetermined wind loads at the signs because break away couplers coupling the signage

support would allow the support to break away preventing damage to the signage once a maximum amount of allowable force is exceeded." None of the references, taken singly or in combination show or suggest the subject matter of claim 21. Apparently, the Examiner is rejecting the claim based upon the applicants own specification, or the Examiner has some special expertise in this matter. Accordingly, applicants request that the Examiner supply evidentiary documentation fully supporting his statement or a personal affidavit fully supporting this statement drawn under the provisions of 37 CFR § 1.104(d) (2).

In rejecting claims 22 and 26, the Examiner states that Pool as "modified" shows all the claimed limitations except for the subject matter of claims 22 and 26. Pool as "modified" does not show all the claimed limitations for reasons given above. In making this rejection, the Examiner states that it would have been obvious to "modify" Pool's modified structure to show "...each sleeve engagement surface being at an elevation with respect to the paved surface selected to effect a linear alignment of the first pole tops or the sleeve engagement surface of the two anchors being at an elevation with respect to the paved surface selected to effect a common elevation of the second pole second tops because it would enable the tops of the first poles to have the same height and the tops of the second poles having the same height which would result in aesthetic appearance for the retail store". None of the references, taken singly or in combination show anchors as described in the claim or do they describe or suggest sleeve engagement surfaces in such anchors. Apparently, the Examiner again is relying on some personal expertise in making this statement. Accordingly, applicants request that the Examiner supply evidentiary documentation in full support of his statement or a personal affidavit in full support of his statement under the provisions of 37 CFR § 1.104(d) (2).

In rejecting claim 23 the Examiner has stated that Pool as "modified" shows all the claimed limitations with the exception of the subject matter of claim 23. Pool as "modified" does not show all the claims limitations whatsoever for reasons given above. In applying this rejection the Examiner has stated that it would have been obvious to "modify" Pool's modified structure to show what is then a paraphrasing of the entirety of claim 23 with a further statement that the subject matter of the claim "...would allow for the hanging and easy removable of the signage to the poles." The claim looks to a banner assembly such as that shown adjacent the entrance of the retail boundary shown in Fig. 1. There are no banners shown or suggested in any of the references, taken singly or in combination. Again, it appears that the Examiner is relying on some personal expertise to assert this statement of rejection. Accordingly, applicants request that the Examiner supply evidentiary documentation fully supporting his statement or a personal affidavit fully supporting that statement drawn under the provisions of 37 CFR § 1.104(d) (2).

The Examiner has rejected claims 24-25 stating that Pool as modified shows all the claimed limitations except for what are the recitations of claims 24 and 25 themselves. For reasons given above, Pool as "modified" shows essentially none of the limitations of the claims in this application. None of the references, taken singly or in combination show a banner as taught in claim 23 with its appropriate connector assemblies, the higher poles, a lower banner assembly with components recited in claim 24, or break away lower couplers as recited in claim 25. In asserting this rejection, the Examiner has stated that it would have been obvious to modify Pool's "modified" structure to show the system representing the subject matter of claims 24 and 25. Among the reasons given for this, the Examiner states "...because having a lower banner connector assembly fixed to each second poles adjacent the lower banner edge would allow for the support of the banner at the lower banner edge thus resulting in the banner not moving in undesirable locations and directions, having a banner retainer assembly removably coupled between the second poles at the lower banner retainer assembly would allow for the hanging of the banner at the poles, and having the two lower couplers removably connected and being break away coupler would enable the easy and quick assembly/disassembly of the banners at the poles and the break away coupler would ensure the banner not destroyed when the wind force is too high as the break away coupler would first break which would result in the banner not subjected to the previous major wind force." It appears that the Examiner is rejecting claims based upon the applicants' own specification. None of the references, taken singly or in combination show or suggest subject matter of claims 23, 24 and 25, claim 24 being dependent upon claim 23. Again, the Examiner appears to be making this statement based upon his own personal expertise. Accordingly, applicants request that the Examiner supply evidentiary documentation in full support of his statement or a personal affidavit in full support of his statement drawn under the provisions of 37 CFR § 1.104(d) (2).

In support of the commentary of the applicants as given above, the following declarations drawn under the provisions of 37 CFR § 1.132 are submitted herewith. by Baughman, Kern, Dascenzo and Young which have applicability to substantially all of the above discussed rejections.

Respectfully submitted,



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Date: July 16, 2003

Appln. No. 09/995,417
Amendment dated 07/16/03
Reply to Office Action of 4/24/03

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Enclosures: (4) declarations and
(4) curriculum vitae/resumes

CERTIFICATE OF MAILING

I hereby certify that this correspondence is being deposited on July 16, 2003 with the United States Postal Service as first class mail in an envelope addressed to:

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Jane Keeney

A handwritten signature in black ink, appearing to read "Jane Keeney". The signature is fluid and cursive, with a horizontal line extending from the end of the signature.